

1986

The State of Utah v. Sandra Bankhead : Brief of Appellant

Utah Supreme Court

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David Wilkinson; Attorney General; Attorneys for Respondent.

Thomas J. McCormick; Salt Lake Legal Defender Assoc.; Attorney for Appellant.

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff/Respondent, :
:
MIRA BANKHEAD, : Case No. 86 0012
Category No. 2
Defendant/Appellant. :

BRIEF OF APPELLANT

Appeal from a conviction and judgment for four counts of
Falsely Signing Evidence of a Financial Transaction Card Transaction,
Felonies of the Second Degree, in the Third Judicial District Court,
Salt Lake County, State of Utah, the Honorable Leonard H.
Hess, Judge presiding.

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86 0012

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Attorneys for Respondent

FILED

AUG 26 1986

Clerk, Supreme Court Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff/Respondent,	:	
v.	:	
SANDRA BANKHEAD,	:	Case No. 86 0012
Defendant/Appellant.	:	Category No. 2

BRIEF OF APPELLANT

Appeal from a conviction and judgment for four counts of
Falsely Signing Evidence of a Financial Transaction Card Transaction,
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Russon, Judge presiding.

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STATEMENT OF ISSUES

1. Did the trial court err in not sentencing Ms. Bankhead under UCA §76-6-506.2 instead of §76-6-506.1 since both sections prohibit the same conduct and §76-6-506.2 carries the lesser penalty?
2. Was Ms. Bankhead denied a fair trial by being tried before an all-white jury which was drawn from an all-white voir dire panel?

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff/Respondent,	:	
v.	:	
SANDRA BANKHEAD,	:	Case No. 86 0012
Defendant/Appellant.	:	

BRIEF OF APPELLANT

STATEMENT OF THE CASE

The Appellant, Sandra Bankhead, appeals from a judgment and conviction imposed for Falsely Signing Evidence of a Financial Transaction Card Transaction in violation of Utah Code Ann. §76-6-506.1 (Supp. 1985) in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Leonard H. Russon, Judge presiding.

STATEMENT OF FACTS

On August 30, 1985 Sandra Bankhead made purchases at four stores in downtown Salt Lake City using the Visa card of Louie Sims. These purchases consisted of clothing and the values of the purchases ranged from \$4.23 to \$80.60 (T.28,35,42,48) for a total value of \$165.19. Ms. Bankhead signed for the purchases using the fictitious name of Rita Sims. (T.35) Ms. Bankhead was arrested after a store employee became suspicious because the card wasn't signed.

Ms. Bankhead and the owner of the Visa card, Mr. Sims, were involved in a sexual relationship (T.51) and earlier on August 30, Mr.

Sims and Ms. Bankhead had a confrontation with Ms. Bankhead's husband. (T.65) Ms. Bankhead's husband asked her to choose between him and Mr. Sims at which time Ms. Bankhead chose Mr. Sims. (T.65) Ms. Bankhead's husband later returned to Ms. Bankhead's hotel room and destroyed Ms. Bankhead's clothing. (T.88) When asked by Appellant if he would have called the police if Ms. Bankhead had come to him after making the purchases Mr. Sims replied that he doubted that he would. (T.67)

During trial Appellant moved to quash the jury panel as being a non-representative sampling of the community and that motion was denied. (T.91)

After Ms. Bankhead was convicted but prior to sentencing Appellant moved the court to sentence Ms. Bankhead under Utah Code Ann. §76-6-506.2 (Supp. 1985) which in this case would have been a Class A Misdemeanor and not under §76-6-506.1 (Supp 1985) which is a Second Degree Felony because §76-6-506.1 and §76-6-506.2 contain the same elements but proscribe different penalties. (T.133). This motion was denied by the Court because §76-6-506.1 contains the element of a fictitious signing (T.145) not present in §76-6-506.2 The court reduced the sentences one step to Third Degree Felonies and sentenced Ms. Bankhead to four concurrent terms of zero to five years. (T. 159).

STATEMENT OF COUNSEL

I, THOMAS J. McCORMICK, represent to this court that I was the trial attorney for the defendant and have read the transcript herein. I would represent that I do not believe the defendant has any meritorious appeal issues and that this appeal is frivolous. As a result of this conclusion, this brief is being prepared along the guidelines established in Anders v. California, 386 U.S. 738 (1967) as adopted by the Utah Supreme Court in State v. Clayton, 639 P.2d 168 (Utah 1981).

The defendant, Sandra Bankhead, was given a copy of this brief, (Addendum A), and the following are the issues which she raises. Further, Ms. Bankhead was allowed to respond to this brief and add her comments which appear as Addendum B.

POINT I

DEFENDANT SHOULD HAVE BEEN SENTENCED UNDER
UCA §76-6-506.2 BECAUSE UCA §76-6-506.1 AND
§76-6-506.2 PROHIBIT THE SAME CONDUCT AND
§76-6-506.2 CARRIES THE LESSER PENALTY

The issue of whether Utah Code Ann. §76-6-506.1 (Supp 1985) and Utah Code Ann. §76-6-506.2 (Supp 1985) prohibit exactly the same conduct was decided by this court in State v. Gomez, 33 Utah Adv. Rep 21 (Utah 1986) subsequent to the filing of the Notice of Appeal in this case. Gomez held that the two statutes do not have identical elements because §76-6-506.1 requires proof of a "signing" of a sales receipt. The Court also said the State acts within its prosecutorial

discretion in charging under §76-6-506.1 instead of the lesser Third Degree Felony or Class A Misdemeanor of §76-6-506.2.

Unless this Court is willing to reconsider Gomez, the issue of whether the trial court erred in refusing to reduce the severity of the offenses after the jury returned its verdict is without merit and is bound by this court's decision in Gomez since a "signing" was involved in this case. (T.35).

POINT II

THE TRIAL COURT ERRED IN PERMITTING THE DEFENDANT TO BE TRIED BY AN ALL- WHITE JURY WHICH WAS DRAWN FROM AN ALL-WHITE VOIR DIRE PANEL.

During the trial, the Appellant presented a motion to the trial court requesting that the entire jury panel be quashed. The basis for this motion was the absence of minorities on the panel and that it was therefore impossible to select a jury representing a fair cross-section of the community.

In this case the defendant is black and believe that she is therefore entitled to be tried before a jury that consists of at least some members of her race. In two recent cases, Taylor v. Louisiana, 419 U.S. 522 (1975), and Duren v. Missouri, 439 U.S. 357 (1979) the Supreme Court has reversed criminal convictions based on the underrepresentation of a particular segment of the community on the jury panel. In both of these cases evidence was presented that

women were being systematically excluded from the jury venire.

In this case no minorities were present in the jury voir dire panel. While Taylor v. Louisiana held that the Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to a jury selected from a fair cross-section of the community the court was careful to say that juries chosen need not "actually mirror the community and reflect the various distinctive groups in the population", 419 U.S. at 538.

In this case although the defendant may believe she was denied a fair trial because of the absence of minorities on the jury no case law supports the contention that a minority defendant is entitled to have members of the same minority group on the jury which tries the case. Furthermore, under the Jury Service and Selection Act, Utah Code Ann. §78-46, the motion in this case was not timely filed. The motion in this case was made at the conclusion of the presentation of evidence (T.91), not before the jury was sworn as required by §78-46-16(1). (It should be further noted that the challenge in this case was to the composition of the jury itself not to the composition of the venire. This differentiates this case from others currently pending before this court in which challenges were made to the venire.)

CONCLUSION


This appeal has been prepared pursuant to the guidelines in Anders v. California, 386 U.S. 738 (1967) as adopted by this State in State v. Clayton, 639 P.2d 168 (Utah 1981). Counsel has read the record and set forth any possible points to be argued in defendant's favor on appeal. Having done so, and having the belief that the appeal is frivolous, I respectfully request this Court to permit the withdrawal of the Salt Lake Legal Defender Association from this appeal.

Respectfully submitted this ____ day of _____, 1986.


THOMAS J. MCCORMICK
Attorney for Appellant

CERTIFICATE OF DELIVERY

I, THOMAS J. MCCORMICK, hereby certify that four copies of the foregoing brief will be delivered to the Attorney General's Office, 236 State Capitol Building, Salt Lake City, Utah 84114, this ____ day of _____, 1986.


THOMAS J. MCCORMICK
Attorney for Appellant

I, _____, delivered the foregoing copies this ____ day of _____, 1986.

ADDENDUM A

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	AFFIDAVIT
Plaintiff/Respondent,	:	
v.	:	
SANDRA BANKHEAD,	:	Case No. 86 0012
Defendant/Appellant.	:	

I, CURTIS C. NESSET, being first duly sworn according to law on my oath depose and say:

1. I am the appellate attorney at the Salt Lake Legal Defender Association.

2. Acting in my capacity as appellate attorney, I personally delivered a draft copy of the foregoing brief to Sandra Bankhead (aka Sandra Butterfield) at the Utah State Prison on Friday, August 15, 1986.

3. On Friday, August 22, 1986 I personally received from Ms. Bankhead comments which she wished to appear in the brief and delivered them to Ms. JoAnn Schneider for typing.

DATED this 26th day of August, 1986.

Curtis C. Nessel
CURTIS C. NESSET
Appellate Attorney
SALT LAKE LEGAL DEFENDER ASSN.

SUBSCRIBED AND SWORN to before me this 26th day of August, 1986.

My Commission Expires:

2-27-88

Kimberly J. Allen
NOTARY PUBLIC
Residing in Salt Lake County, Utah

ADDENDUM B

STATEMENT OF SANDRA BANKHEAD, DEFENDANT/APPELLANT

I'm writing you to request your help in my case #CR85-1184. I am presently incarcerated at the "Utah State Womens Correctional Center", awaiting an appeal. My attorney is, "Mr. Tom McCormick", but I don't feel he is standing up for my rights. Don't get me wrong, I don't have anything against Mr. McCormick, it's just I don't feel he had my best interest at hand.

I'm in the prison for using a "Credit Card Forgery II". You see in January 1985: I met Mr. Louis Sims to whom the card belonged to, but it wasn't until the beginning of August '85, our relationship seem to be getting serious. I left my husband for him, and moved into a motel across the street from Louie's place of business. My husband found out where I was staying and came over Louie and I were there.

Louie and my husband had words. Husband said to me, "I want you to tell us, with everyone standing here, who do you want to be with?" "I stated, I want to be with you Louie". Then Louie told my husband to leave. He left saying "I'll be back." Louie and I then walked over to his place of business. We went back over to the motel about half an hour later. We found the room a mess, and everything destroyed. I had no clothes left.

Well, I started crying. Louie states, "Baby it's okay I'll help you get yourself back together, stop crying." We walked back to his place of business and I went inside. He went to his car to return with his "Visa Credit Card", in his hand. He said, "You can buy a few things with my bank card." He told "me how to use it and what name to use". We went back over to my motel and had sex. Afterward

I went up town to "Crossroads Mall", bought one pair 501 jeans, tee shirt, tennis shoes a dress and a pair of earrings. It all came to total amount of \$165.19. I was arrested at "Kenny Shoes Store".

When the police, asked me. "Who I was?" I told them, I was Mr. Sim's Wife, then he asked me, "Did I have a phone number to reach Mr. Sims?" I gave the police two phone numbers, one to Mr. Sim's place of business and one to a friend of his. The police didn't try neither of them. He looked, Mr. Sim's phone number up in the phone book and called his house. Then asked, "May I ask whom am I speaking with?" Then the police asked, "Do you know a Rita Sims?" "Is your husband Louie Sims there?" I have a young lady here saying she is "Mrs. Sims," she is using "Louies Visa Credit Card," Do you know where I can reach your husband?"

I never knew he was married until that time. Anyway she gave the police one of the same phone numbers I gave the police earlier. At the trial, the police stated, I gave them a few phone numbers. My attorney, Tom, asked the police. ¹"Did he try any of the phone numbers?" ²"Did he bring the little book he wrote the nubers in?" ³ Did he bring it to court? The police said "no", to all three questions!! So getting back to when the police called Louie Sims. The police said: "Mr. Sims, your wife told me where I could reach you!" Do you know a young lady named Rita?" The police couldn't hear on the phone line, he told Louie he would call him right back. Then the police took me upstairs to be booked into "Salt Lake County Jail". Then the police called Louie back and said, "Did you give her authority to use your "Visa Credit Card?" The police said, "Well Louie were gonna arrest her and

take her to jail." I asked to please let me talk to Louie cause he did let me use the credit card." The police told me, I could make the call to Louie when I got to the jail. The police stated, "he knew what my real name was."

When I got to the jail upstairs I called Louie. The first thing he said to me was, "Why did you have them police call my house?" I told him, "I tried to give them police the phone number to your place of business". I said, "why didn't you tell the police it was cool for me to use your credit card. He never answered me. Then I asked him, "Are you going to get me out of jail?" Louie said "Yea, what's your bail?" I said, "They haven't set one yet." He told me to call him when they did. They never set bail because I was on parole.

The day the trial was to start the "States Key Witness" didn't show up. They sent me back to the jail and said they would set the trial for the next day provided they could find their key witness, Louie Sims. They had to surround him, supeona, and told him if he didn't show up at the trial he was, "going to jail."

Louie Sims, didn't show the first day of the trial cause he lied on me to save his marriage. Then he told, "The court he had been married for 20 years." But, anyone can see that he is lieing from the transcripts of the trial and the Preliminary Hearing. This is a guy, I slept with for almost 8 months. Know body knows what he said to me when he was jumping up and down in my stuff (meaning having sex).

Another thing I felt was very unfair I am a "Black Woman", there was not one other race to pick from out of the whole jury. An all "White Jury" for a "Black Person." Mr. McCormick tells me there is nothing I can do about it. I knew the "verdict was going to be guilty"

when I saw all them "White People". It was very unfair as there is alot of racicisium in the State of Utah. There should have been other nationality's on that Jury. I should be let out on the basis of prejudice jury.

Judge Russon, "Didn't agree to Mr. McCormick's motion, That's why I am taking an appeal."

But at this point in time I'm not going anywhere, the board gave me 2½ years for this petty crime. I already gave the "State of Utah" 3 years for somethings I did I am guilty of.

My first "felony convictions", "Aggravated Assault and Aggravated Robbery" expired the "18th of June 1986." I can't see why I can't get out on "Appeal Bond." I haven't killed anyone and I feel if "Mark Hoffmann," can get out I should be able, too! In the "Code of Criminal Procedure," it says I should be able to get out.

I am not "guilty" of this crime. I asked "Judge Russon" to let me out 5 days before I came to, "Utah Womens Correctional Facility" so I could take care of my sons, he denied my request. I just need out of here to be able to take care of my sons, as its truly unfair.

I don't feel Louis Sims had the right to testify on me. Any man who has been married 20 years; has his own business, is not going to risk loosing it over a 22 year old Black Woman. If he is unfaithful to his wife, "Which he has been with for 20 years," "How can he be faithful to 8 people he's never seen before?" Meaning the Jury. I have been sent to prison for a crime I was set up on.

I asked, my attorney, "Tom McCormick" to bring out a point in my trial, like: "Mr. Sims, have you ever been arrested?" Mr. McCormick asked my husband that question. I am sitting in prison so Mr. Sim's

marriage can be saved. Mr. Sim's is not telling the truth. I was very upset at my attorney for all the mistakes he made like: letting the trial be postponed another day because the "States Key Witness", Louie Sims-didn't show up.

I was not out shopping for TV, Stereo, or Diamonds for this I did need Mr. Sim's okay. I gave the police two phone numbers, where they reach Louie. The police looked up his number to his home and when asked, the police in court if they were given any phone numbers, they stated, "Yes, I had given them some numbers but he didn't have them." Did he write them down? The police stated, "Yes". Did he have them today in court? He stated, "No". The police should have put the phone numbers in the evidence, to prove I did give them the right numbers to call. Instead the police called, "Louie's Wife". Like I said, "Louie was very upset." \$165.19 Why would I buy a \$4.00 T-Shirt, burn him or the stores for that matter?"

I just want you to know I'm not guilty- of this crime in any way, I'd truly appreciate your help in this matter.

-Thank you-
Sincerely,

SANDRA BANKHEAD/BUTTERFIELD

P.S. Have a nice day!! Thank you, for your time, patience in allowing me to explain this matter to you.

P.S.S.

My attorney, Tom McCormick advised me not to testify in my own behalf because I had spent time there before in the Utah State Prison so I took his advise, but I really felt I should speak my side of the story. But the DA would have asked me had I ever been arrested before? Furthermore, I asked my attorney to make certain comments to the jury during closing argument concerning truthfulness of Louie Sims which my attorney did not speak up about.

SANDRA B. BUTTERFIELD


IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	AFFIDAVIT
Plaintiff/Respondent,	:	
v.	:	
SANDRA BANKHEAD,	:	Case No. 86 0012
Defendant/Appellant.	:	

I, JOANN SCHNEIDER, being first duly sworn according to law on my oath depose and say:

1. I am a secretary at the Salt Lake Legal Defender Association.
2. I received a handwritten statement signed by Sandra Bankhead Butterfield from Curtis C. Nessel, appellate attorney for Salt Lake Legal Defender Association.
3. The foregoing is a true and accurate typewritten copy of the handwritten document with the exception of one paragraph which was deleted at the direction of the appellate attorney.

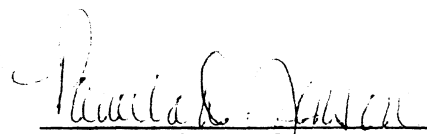
DATED this 26th day of August, 1986.


JOANN SCHNEIDER
SECRETARY SALT LAKE LEGAL
DEFENDER ASSN.

SUBSCRIBED AND SWORN to before me this 26th day of August, 1986.

My Commission Expires:

5-31-88


NOTARY PUBLIC
Residing in Salt Lake County, Utah

ADDENDUM C

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	COUNSEL'S REQUEST FOR
Plaintiff/Respondent,	:	LEAVE TO WITHDRAW FROM THE
		APPEAL
v.	:	
SANDRA BANKHEAD,	:	Case No. 86 0012
Defendant/Appellant.	:	

Pursuant to the requirements of State v. Clayton, 639 P.2d 168 (Utah 1981), THOMAS J. McCORMICK, attorney for the appellant, SANDRA BANKHEAD, respectfully requests permission to withdraw from the appeal in this case. An Anders brief has been completed and submitted to the Appellant.

DATED this 17th day of August, 1986.


THOMAS J. McCORMICK
Attorney for Appellant

DELIVERED a copy of the foregoing to the Office of the Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84111 this _____ day of August, 1986.
